IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/07/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.8926 OF 1995 AND WRIT PETITION NO. 8927 OF 1995

The Superintending Engineer,
Coimbatore Electricity
Distribution Circle (South),
Coimbatore 12. .. Petitioner in both WPs

-Vs-

1. The Presiding Officer,
Labour Court, Coimbatore

2. Thiru V. Ramasamy,
A.K.S. Nagar,
361, Rakkiyapalayam,
Coimbatore 641 031. .. Respondents in both WPs

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.H. Mahadevan for
M/s.T.S. Gopalan & Co.

For Respondent 1 : Mrs.N.G. Kalaiselvi
Special Govt. Pleader

Respondent - 2 : Mr.K.V. Shanmuganathan

:J U D G M E N T

These two writ petitions have been filed by the Superintending Engineer, Coimbatore Electricity Distribution Circle, Tamil Nadu Electricity Board, Coimbatore against the decision of the Presiding Officer, Labour Court. The first writ petition is directed against the order dated 20.7.1994 passed by the Labour Court, Coimbatore holding as a preliminary issue that the domestic inquiry conducted by the present petitioner was not in accordance with the principles of natural justice. The second writ petition is directed against the ultimate award in I.D.No.311 of 1990 dated 21.12.1994 directing that the present second respondent should be reinstated in service with continuity of service with full backwages.

2. The second respondent was working as a watchman under the petitioner. A departmental proceeding was initiated against the second respondent on the allegation that he failed to perform his duty on 19.1.1989 when certain materials were brought to the stockyard and the lorry which brought those materials was allowed to go out without proper verification as a result of which shortage of 457 kgs of 10mm rods was found subsequently. Before initiating the departmental proceeding, an explanation was called for from the second respondent, wherein the second respondent while admitting that he was the watchman at the relevant time, denied in respect of materials taken out. In the departmental proceedings, the contractor in whose lorry the materials had been brought was examined and the statement of the second respondent made before the police also placed before the enquiring authority. The departmental authrotiy came to the conclusion that shortage of 10 mm rods has been established and that was due to the negligence of the second respondent as he had not checked the lorry while it was going out. On the basis of such departmental proceedings, an order of dismissal was passed. Thereafter, the petitioner filed I.D.No.311 of 1 990. The procedural validity of the departmental proceedings was taken up as a preliminary issue and the Labour Court mainly relying upon the fact that the statement made by the second respondent before the police had been relied upon, even though a copy of the statement has not been furnished, held that principles of natural justice had been violated. Thereafter certain witnesses were examined in the Labour Court on behalf of the Department. The Labour Court came to the conclusion that there was no material to show that respondent No.2 was the watchman at the relevant time when the lorry had gone out and held that culpability of the respondent No.2 was not established. Accordingly, a direction for reinstatement with full backwages had been given.

3. Learned counsel for the petitioner has submitted that the observation of the Labour Court in the preliminary issue that principles of natural justice had not been followed in the domestic enquiry is illegal and cannot be supported by law. He has placed reliance upon a decision of the Supreme Court reported in 1997(1) L.L.N. 62 (KULDIP SINGH V. STATE OF PUNJAB AND OTHERS). It has been further submitted that even assuming that the statement made before the police should not have been relied upon without furnishing a copy of the statement, residue material in the domestic enquiry was sufficient and such other part of the domestic enquiry was not at all vitiated. It has been further pointed out that even otherwise before the Labour Court sufficient materials have been produced to show the negligence of the watchman and the Labour Court has erroneously come to a conclusion regarding absence of liability by committing an error of record. It has been submitted that in either view of the matter, the order of reinstatement passed by the Labour Court cannot be sustained.

4. Learned counsel for the respondent No.2 submitted that the Labour Court has come to particular conclusions by referring to relevant material on record and such conclusions are not liable to be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

5. In 1997(1) LLN 62 (cited supra), the person was dismissed from service on the basis of the statement made before the police without

holding a formal enquiry under Article 311 by invoking the proviso (b) of Article 311(2) by dispensing with the enquiry. One of the main contentions raised before the Supreme Court was to the effect that the statement allegedly made before the police was not admissible and except such statement made before the police, there was no other material before the disciplinary authority to pass an order of dismissal. Defending such a contention, the Supreme Court has observed that :

 . . . strict rules of Evidence Act do not apply to departmental/ disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confusion/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant s confession. There is undoubtedly no other material.

6. Similar views have been expressed in 1982(1) LLJ 46 (STATE OF HARYANA AND ANOTHER v. RATTAN SINGH).

7. In the present case, the statement made before the police had been marked in the domestic enquiry in the presence of the delinquent. Non-furnishing of a copy at that stage was not very material. Moreover, even assuming that such a statement made before the police could not have been relied upon by the disciplinary authority, there were other materials before the disciplinary authority which had been relied upon by the disciplinary authority. The conclusion of the Labour Court that the domestic enquiry was vitiated by non-observance of principles of natural justice thus appears to be unsustainable. More particularly so because the other part of the disciplinary proceedings, which had been undoubtedly done in accordance with the principles of natural justice, had also been relied upon by the disciplinary authority to come to a conclusion regarding the misconduct.

8. Even apart from the conclusion at the domestic enquiry regarding the misconduct, the materials adduced before the Labour Court appear to be sufficient to establish the negligence of the respondent No.2 . The Labour Court has committed an error of record when it observed that the petitioner (thereby watchman) has worked only in the second shift in the night. Even before he came for duty, the rods having been brought from the central depot have reached the site manufacturing the pillars. This basic and serious error of record has vitiated the entire order passed by the Labour Court. Even in the initial explanation before the authorities, the respondent No.2 has stated that the materials have been brought inside the stock-yard during his presence. The materials which were adduced at the domestic enquiry even without the statement made before the police and the materials which were also produced before the Labour Court were sufficient to come to a conclusion that the respondent No.2 was negligent at the time of unloading of the materials and at the time when the lorry went out of the yard, which ultimately resulted in shortage of materials.

9. In view of such errors, in normal course, I would have remanded the matter to the Labour Court to consider the question of appropriateness of the punishment imposed, even though his negligence has been established. However, since the matter has remained pending for a long period and keeping in view the fact that the allegation is relating to negligence of the respondent No.2 and there is no allegation nor proof of direct complicity in the matter of removal of the articles, the punishment of dismissal from service appears to be grossly disproportionate. In the peculiar facts and circumstances of the case, it is directed that the petitioner should be reinstated in service with continuity of service, but without backwages within a period of thirty days from the date of receipt of a copy of this order. The respondent No.2 shall be entitled to his normal wages after he rejoins in service, but no backwages would be payable for the period during which he has remained out of service.

10. Accordingly, both the writ petitions are allowed to the extent indicated above.

Index : Yes
Internet : Yes
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To

The Presiding Officer,
Labour Court, Coimbatore.

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